

Doctrine of Mutuality - A Pandora's Box of Litigation in GST

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❖ Introduction

The Goods and Services Tax (GST), implemented in India from 1st July 2017, was envisioned as a unified indirect tax regime replacing multiple state and central levies. GST aimed to simplify tax compliance and eliminate cascading taxes. However, its implementation has not been without constitutional and legal challenges, particularly concerning the scope and reach of what constitutes a “supply” and who can be taxed.

One such contentious issue revolves around the doctrine of mutuality - a principle holding that one cannot make a profit from oneself.

This article examines the far-reaching implications of the recent decision of the Kerala High Court in *Indian Medical Association v. Union of India*¹, which struck down provisions of the CGST Act for violating this doctrine. The ruling potentially raises critical questions about the constitutionality of other deemed supply provisions under GST.

❖ The Doctrine of Mutuality

The doctrine of mutuality, a time-honoured legal principle, asserts that a person cannot make a profit out of themselves. In essence, it denotes that one cannot sell goods or services to oneself. This concept finds extensive application in the realm of clubs, associations, and mutual organizations, where members and the entity are considered the same.

This doctrine is intrinsically rooted in the Doctrine of Agency, wherein the entity acts merely as an agent on behalf of its members. Transactions such as pure agency arrangements and reimbursement of expenses are classic examples, where no element of profit or commercial intent arises. Such arrangements are devoid of a quid pro quo and hence have traditionally remained outside the tax net.

In Indian jurisprudence, the Supreme Court in *Joint CTO v. Young Men's India Association*² examined a members' club whose members jointly owned the club's assets. The Court held that when a club merely acts as agent for its members in providing food or refreshments, no “sale” takes place because the members are effectively transacting with themselves. The members were “joint owners of all the club properties,” and each member was in substance a shareholder of the club. Thus, supply of goods within the club could not be treated as a sale for sales tax purposes. This distinction between a “members' club” (mutual institution) and a “proprietary club” (profit-seeking entity) became entrenched law; in a mutual club, the element of transfer of property is absent because the recipients (members) are the beneficial owners of all assets. Only when a club is a separate profit-making entity (e.g. a proprietor's business) does a sale occur.

¹ (2025) 29 Centax 232 (Ker.)

² (1970) 1 SCC 462

The underlying principle is that an association and its members share a common interest and identity of rights. By 1980, the Supreme Court had reaffirmed in *YMIA* that mutuality survives unless explicitly abrogated by law.

❖ **The 46th Constitutional Amendment and Article 366(29A)(e)**

In an attempt to broaden the scope of indirect taxation and to overcome *YMIA* and related judgments, the Parliament inserted Clause (29A) into Article 366 via the 46th Amendment.

The Constitution (Forty-Sixth Amendment) Act, 1982, introduced a deeming provision under Article 366(29A)(e), which reads: “(29A) ‘tax on the sale or purchase of goods’ includes – (e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.”

Notably, Clause (29A)(e) explicitly mentions only “unincorporated association or body of persons,” suggesting by its terms that an incorporated club was not the primary target. The Statement of Objects and Reasons stated that the amendment was meant to overturn *YMIA* and analogous judgments by expanding the ambit of sales tax on clubs.

This amendment was a legislative response to various judicial pronouncements that exempted such supplies under the doctrine of mutuality. However, it gave rise to a pivotal question: Did this amendment abrogate the doctrine of mutuality altogether, especially for services? The lack of an equivalent provision for services in Article 366(29A) left room for judicial interpretation.

❖ **Judicial Clarification: Calcutta Club and Precedent High Court Decisions**

This lingering dispute was conclusively addressed in *State of West Bengal v. Calcutta Club Ltd*³. The Supreme Court upheld the principle that the doctrine of mutuality continues to prevail, particularly in the context of services. In doing so, it relied on *Ranchi Club v. Chief Commissioner of Central Excise & Service Tax*⁴ and *Sports Club of Gujarat Ltd. v. Union of India*⁵

In its 2019 judgment, the SC emphatically held that the “doctrine of mutuality continues to be applicable to incorporated or unincorporated members’ club after the 46th Amendment”. The apex court ruled that transactions between members and their clubs do not constitute a “supply” under service tax laws, as they lack the element of duality - a core requirement for a taxable transaction.

The Court reasoned that a constitutional power to tax supply presupposes two parties; any “self-supplies” are beyond that power. Notably, the Court emphasized interpretive principles: a phrase in the Constitution must be read by its “known legal connotations,” and the state cannot by statute expand a taxing head beyond the constitutional language. In short, the SC underscored that the constitutional concept of “supply” and “service” could not be statutorily broadened to override a long-standing rule of mutuality.

³ [2019 (29) G.S.T.L. 545 (S.C.)]

⁴ [2012 SCC Online SC 306]

⁵ [2013 (31) S.T.R. 645 (Guj.)]

❖ Legislative Override: The Insertion of Section 7(1)(aa)

Following the Supreme Court's decision in *Calcutta Club*, Parliament enacted remedial amendments through the Finance Act, 2021. The CGST Act was amended with retrospective effect from 1st July 2017 inserting Section 7(1)(aa) to statutorily deem any supply of goods or services by a club, association or body of persons (registered or not) to its members, for consideration, to be "supply" under GST. An Explanation was added to Section 7 to clarify that "notwithstanding any law in force," these dealings are taxable.

Further, Section 2(17)(e) of the CGST Act expands the definition of "business" as "*provision by a club, association, society or any such body (for a subscription or any other consideration) of the facilities or benefits to its members*" so that an association or body of persons could be treated as a separate taxable person for GST. Together, these provisions sought to override mutuality by treating an association and its members as different persons exchanging taxable supply.

❖ The Kerala High Court Decision in *Indian Medical Association v. Union of India*

In this case, the Kerala branch of the IMA challenged the 2021 amendments. IMA Kerala collected membership fees and provided mutual facilities, amenities to its members. GST authorities had issued demands on these club-member transactions, relying on Section 7(1)(aa) and 2(17)(e) as creating a taxable supply between separate persons.

A division bench unanimously struck down the challenged provisions as unconstitutional since the said amendment lacked legislative competence. It held that under the Constitution, GST is strictly a tax on a supply between two parties, and "supply of goods and services" under Article 366(12A) presumes two different persons. A club acting for its members could not satisfy this requirement, since the members and club are one and the same in beneficial interest under mutuality. The Court observed that *Calcutta Club* decision already affirmed mutuality post-46th Amendment; thus the basic law was that no "service" or "supply" was possible within a mutual society.

Crucially, the Kerala High Court distinguished the 1982 Amendment, which had itself altered the Constitution by deeming certain supplies to be sales. It noted that when Parliament inserted Article 366(29A)(e), it amended the Constitution to create a special exception. In contrast, the 2021 amendments merely tinkered with the statute book without amending the Constitution. The Court held this to be impermissible since an amendment to the substantive rule of mutuality, a constitutional premise can only be effected by a constitutional amendment, not by ordinary legislation.

The Court held that these statutory provisions violated Articles 246A, 366(12A) and 265 since they attempted to tax transactions that the Constitution, by its terms and underlying mutuality, did not cover. Ultimately, the High Court declared Sections 7(1)(aa) and 2(17)(e) with explanations of the CGST and KGST Act unconstitutional and void as beyond legislative competence. The effect is that services of a club/association to its own members remain exempt from GST, revalidating the doctrine of mutuality under the Constitution.

❖ Broader Implications over other GST Provisions

While the Indian Medical Association judgment is widely discussed in the context of reaffirming the doctrine of mutuality, its broader constitutional significance extends well beyond that principle. The Kerala High Court's decision rests on the foundational premise that the Constitution does not contemplate the levy of tax on a transaction in the absence of a plurality of persons. By striking down the impugned provisions of the CGST Act, the Court has categorically held that a valid taxable event under the GST framework must involve at least two distinct legal entities – a supplier and a recipient. This principle, rooted in the structural fabric of Articles 246A and 366(12A), casts serious doubt on the constitutionality of other provisions that seek to impose tax on notional or self-supplies by deeming them to be transactions between separate persons. This ruling raises serious questions about the viability of related GST provisions:

A. Whether Section 7(1)(c) read with Section 25(4)/(5) and Schedule I shall hold waters?

These provisions permit taxation of deemed supplies between distinct persons. But if plurality is constitutionally essential, then artificial distinctions within a single legal entity could also be *ultra vires*.

B. Whether the artificial dissemination of a single entity into multiple distinct persons by the statute for the purpose of levying tax is unconstitutional?

The fictional bifurcation of an entity into distinct persons solely for taxation contravenes the spirit of mutuality and duality enshrined in the Constitution. Such definitions could suffer the same fate as Section 7(1)(aa) unless upheld by the Supreme Court.

Thus, unless the Supreme Court renders a definitive ruling, these provisions risk constitutional invalidity, leaving a trail of litigation.

❖ Conclusion

The Indian Medical Association judgment is not merely a reaffirmation of the doctrine of mutuality but a compelling endorsement of constitutional propriety in taxation. The ruling cautions against the dangers of legislative overreach that attempts to override judicial interpretation and distort foundational principles through deeming fictions.

GST, as a comprehensive tax reform, was meant to simplify and unify – not to burden citizens and organizations engaged in cooperative, welfare-oriented, or mutual activity. By attempting to tax transactions within such entities, the state risks undermining the very constitutional values of fairness, reasonableness, and legal certainty.

This judgment serves as a timely reminder that taxation must operate within the discipline of the Constitution, and not through artificial constructs that defeat substance with form. Going forward, policymakers must ensure that tax law development is not driven by revenue considerations alone but is equally informed by empathy, equity, and constitutional clarity.

Only then can GST truly fulfill its promise, not just as a good and simple tax, but as a just and constitutionally sound one.

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